

(b) The holder of a junior rating on August 31, 1970, may not control air traffic, at any operating position at the control tower concerned, until he has met the applicable requirements of § 65.37 of this part. However, before meeting those requirements he may control air traffic under the supervision, where required, of an operator with a senior rating (or facility rating) in accordance with § 65.41 of this part in effect before August 31, 1970.

§ 65.45 Performance of duties.

(a) An air traffic control tower operator shall perform his duties in accordance with the limitations on his certificate and the procedures and practices prescribed in air traffic control manuals of the FAA, to provide for the safe, orderly, and expeditious flow of air traffic.

(b) An operator with a facility rating may control traffic at any operating position at the control tower at which he holds a facility rating. However, he may not issue an air traffic clearance for IFR flight without authorization from the appropriate facility exercising IFR control at that location.

(c) An operator who does not hold a facility rating for a particular control tower may act at each operating position for which he has qualified, under the supervision of an operator holding a facility rating for that control tower.

[Doc. No. 10193, 35 FR 12326, Aug. 1, 1970, as amended by Amdt. 65-16, 35 FR 14075, Sept. 4, 1970]

§ 65.46 Use of prohibited drugs.

(a) The following definitions apply for the purposes of this section:

(1) An *employee* is a person who performs an air traffic control function for an employer. For the purpose of this section, a person who performs such a function pursuant to a contract with an employer is considered to be performing that function for the employer.

(2) An "employer" means an air traffic control facility not operated by the FAA or by or under contract to the U.S. military that employs a person to perform an air traffic control function.

(b) Each employer shall provide each employee performing a function listed in appendix I to part 121 of this chapter

and his or her supervisor with the training specified in that appendix. No employer may use any contractor to perform an air traffic control function unless that contractor provides each of its employees performing that function for the employer and his or her supervisor with the training specified in that appendix.

(c) No employer may knowingly use any person to perform, nor may any person perform for an employer, either directly or by contract, any air traffic control function while that person has a prohibited drug, as defined in appendix I to part 121 of this chapter, in his or her system.

(d) No employer shall knowingly use any person to perform, nor may any person perform for an employer, either directly or by contract, any air traffic control function if the person has a verified positive drug test result on or has refused to submit to a drug test required by appendix I to part 121 of this chapter and the person has not met the requirements of appendix I to part 121 of this chapter for returning to the performance of safety-sensitive duties.

(e) Each employer shall test each of its employees who performs any air traffic control function in accordance with appendix I to part 121 of this chapter. No employer may use any contractor to perform any air traffic control function unless that contractor tests each employee performing such a function for the employer in accordance with that appendix.

[Doc. No. 25148, 53 FR 47056, Nov. 21, 1988, as amended by Amdt. 65-38, 59 FR 42927, Aug. 19, 1994]

§ 65.46a Misuse of alcohol.

(a) This section applies to employees who perform air traffic control duties directly or by contract for an employer that is an air traffic control facility not operated by the FAA or the U.S. military (*covered employees*).

(b) *Alcohol concentration.* No covered employee shall report for duty or remain on duty requiring the performance of safety-sensitive functions while having an alcohol concentration of 0.04 or greater. No employer having actual knowledge that an employee has an alcohol concentration of 0.04 or greater shall permit the employee to perform